

**FILED**  
Clerk  
District Court

**JUN 25 2007**

**For The Northern Mariana Islands**  
By \_\_\_\_\_  
(Deputy Clerk)

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN MARIANA ISLANDS  
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11 UNITED STATES OF AMERICA, )

Criminal Case No. 07-00018

12 Plaintiff, )

13 v. )

14 LIN, BING XIAN )

PLEA AGREEMENT

15 Defendant. )  
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Pursuant to Rule 11(c)(1)(B), the United States and LIN, BING XIAN enter into the following plea agreement:

1. On the understandings specified below, the Office of the United States Attorney for the Districts of Guam and the Northern Mariana Islands ("this Office") will accept a guilty plea from LIN, BING XIAN (the "defendant") to Count One of the Indictment. Count One charges the defendant with Distribution and Possession with Intent to Distribute a Controlled Substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C), in connection with the defendant's

1 possession with the intent to distribute approximately 2.9 grams of methamphetamine in the form  
2 commonly known as "ice" on or about July 29, 2005. Count One carries a maximum sentence of 20  
3 years' imprisonment, a maximum fine of \$1,000,000, a \$100 special assessment, and supervised release  
4 for a maximum period of three years.

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6 2. It is understood that the defendant (a) shall truthfully and completely disclose all  
7 information with respect to the activities of himself and others concerning all matters about which this  
8 Office inquires of him, which information can be used for any purpose; (b) shall cooperate fully with  
9 this Office, the United States Drug Enforcement Administration and the DEA/CNMI Task Force and  
10 any other law enforcement agency designated by this Office; (c) shall attend all meetings at which this  
11 Office requests his presence; (d) shall provide to this Office, upon request, any document, record, or  
12 other tangible evidence relating to matters about which this Office or any designated law enforcement  
13 agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court  
14 proceeding with respect to any matters about which this Office may request his testimony; (f) shall  
15 bring to this Office's attention all crimes which he has committed, and all administrative, civil, or  
16 criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party,  
17 or witness; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance the defendant  
18 may provide to federal criminal investigators shall be pursuant to the specific instructions and control of  
19 this Office and designated investigators.

20 3. It is understood that this Office cannot, and does not, agree not to prosecute the  
21 defendant for criminal tax violations. However, if the defendant fully complies with the understandings  
22 specified in this Agreement, no testimony or other information given by him (or any other information  
23 directly or indirectly derived therefrom) will be used against him in any criminal tax prosecution.  
24 Moreover, if the defendant fully complies with the understandings specified in this Agreement, he will  
25 not be further prosecuted criminally by this Office for any crimes, except for criminal tax violations,

1 related to his participation in possession with intent to distribute methamphetamine in the form  
2 commonly known as "ice," on or about July 29, 2005, in the District of the Northern Mariana Islands, to  
3 the extent that he has disclosed such participation to this Office as of the date of this Agreement, not  
4 involving crimes of violence. This Agreement does not provide any protection against prosecution for  
5 any crimes except as set forth herein.

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7 4. Except as otherwise provided in this Agreement, it is understood that this  
8 Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This  
9 Office will, however, bring the cooperation of the defendant to the attention of other prosecuting  
10 offices, if requested by him.

11 5. In consideration of the foregoing and pursuant to Sentencing Guidelines § 6B1.4,  
12 the parties hereby stipulate to the following facts and application of the guidelines:

13 Offense Level

14 a. U.S.S.G. § 2D1.1 applies to the offense conduct in Count One of the  
15 Indictment, which includes the drug quantities for this count.

16 b. The defendant's relevant conduct on the charges in the Indictment  
17 includes the distribution and possession with intent to distribute at least 2 grams but less than 3 grams  
18 of methamphetamine in the form of "ice." Accordingly, the base offense level under U.S.S.G. §  
19 2D1.1(c)(10) is 20.

20 c. If the defendant allocutes to the crime charged in Count One of the  
21 Indictment to the satisfaction of the Court, a two-level reduction in the offense level for acceptance of  
22 responsibility is warranted under U.S.S.G. § 3E1.1(a).

23 d. If the defendant's plea of guilty to Count One of the Indictment is entered  
24 on or before June 26, 2007, the Government will move for an additional one level reduction for  
25 acceptance of responsibility under U.S.S.G. § 3E1.1(b).

1 e. In accordance with the above, the applicable Guidelines offense level is  
2 17.

3 Criminal History Category

4 f. There is no stipulation as to Criminal History category.

5 Sentencing Range

6 g. Based upon the calculations set forth above, and provided the defendant's  
7 Criminal History is Category I, the stipulated sentencing Guidelines range is 24 to 30 months. In  
8 addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to  
§ 5E1.2. At Guidelines level 17, the applicable fine range is \$5,000 to \$50,000.

9 Facts

10 h. On or about July 29, 2005, defendant participated in the distribution of a  
11 quantity of methamphetamine, in the form commonly know as "ice," a Schedule II controlled  
12 substance.

13 i. The quantity of ice involved in the distribution on or about July 29, 2005  
14 was 2.9 grams, having a purity of approximately ninety-seven percent (97%).

15 6. It is understood that the sentence to be imposed upon the defendant is within the  
16 sole discretion of the Court. This Office cannot, and does not, make any promise or representation as to  
17 what sentence the defendant will receive. However, this Office will inform the Probation Department  
18 and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect  
19 to this case and all other activities of the defendant which this Office deems relevant to sentencing; and  
20 (c) the nature and extent of the defendant's cooperation with this Office. In so doing, this Office may  
21 use any information it deems relevant, including information provided by the defendant both prior to  
22 and subsequent to the signing of this Agreement. In addition, if this Office determines that the  
23 defendant has provided substantial assistance in an investigation or prosecution, and if he has fully  
24 complied with the understandings specified in this Agreement, this Office will file a motion, pursuant  
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1 to Section 5K1.1 of the Sentencing Guidelines, requesting the Court to sentence the defendant in light  
2 of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed,  
3 the sentence to be imposed on the defendant remains within the sole discretion of the Court. The  
4 defendant hereby consents to such adjournments of his sentence as may be requested by this Office.

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6 7. It is understood that, should this Office determine either that the defendant has  
7 not provided substantial assistance in an investigation or prosecution, or that the defendant has violated  
8 any provision of this Agreement, such a determination will release this Office from any obligation to  
9 file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle the defendant  
10 to withdraw his guilty plea once it has been entered.

11 8. It is understood that, should this Office determine, subsequent to the filing of a  
12 motion pursuant to Section 5K1.1 of the Sentencing Guidelines, that the defendant has violated any  
13 provision of this Agreement, this Office shall have the right to withdraw such motion.

14 9. It is understood that, should the defendant commit any further crimes or should it  
15 be determined that he has given false, incomplete, or misleading testimony or information, or should he  
16 otherwise violate any provision of this Agreement, the defendant shall thereafter be subject to  
17 prosecution for any federal criminal violation of which this Office has knowledge, including perjury  
18 and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of  
19 limitations on the date of the signing of this Agreement may be commenced against the defendant,  
20 notwithstanding the expiration of the statute of limitations between the signing of this Agreement and  
21 the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based  
22 on the statute of limitations with respect to any prosecution that is not time-barred on the date that this  
23 Agreement is signed.  
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1           10.     The defendant understands that to establish the offense of Distribution and  
2 Possession with Intent to Distribute a Controlled Substance, a violation of Title 21, United States Code,  
3 Sections 841(a)(1) and 841(b)(1)(B), the government must prove each of the following elements  
4 beyond a reasonable doubt:

5                   a.     First, the defendant knowingly possessed methamphetamine in a form  
6 commonly known as "ice" in a measurable or detectable amount.

7                   b.     Second, the defendant possessed it with the intent to deliver it to  
8 another.

9           11.     The defendant acknowledges that he has been advised of his rights as set forth  
10 below prior to entering into this Agreement. Specifically, defendant has been fully advised of, has had  
11 sufficient opportunity to reflect upon, and understands the following:

12                   a.     the nature and elements of the charges and the maximum possible penalty  
13 provided by law;

14                   b.     his right to be represented by an attorney;

15                   c.     his right to plead not guilty and the right to be tried by a jury and at that  
16 trial, the right to be represented by counsel, the right to confront and cross-examine witnesses against  
17 him, and the right not to be compelled to incriminate himself, that is, the right not to testify;

18                   d.     that if he pleads guilty, there will not be a further trial of any kind on the  
19 charges to which such plea is entered so that by entering into this Agreement, he waives, that is, gives  
20 up, the right to a trial; and

21                   e.     that, upon entry of a plea of guilty, or thereafter, the Court may ask him  
22 questions about the offenses to which he has pled, under oath, and that if he answers these questions  
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1 under oath, on the record, his answers may later be used against him in prosecution for perjury or false  
2 statement if an answer is untrue.  
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4 12. Being fully advised of his rights as set forth in the preceding paragraph, the  
5 defendant represents that:  
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7 a. the agreement is voluntary and not a result of any force, threats or  
8 promises apart from this Agreement;

9 b. he reads, speaks, writes and understands English and has read and  
10 understood the this Agreement or has had a qualified interpreter read the Agreement to him in a  
11 language that he understands, and that he fully understood such translation; and

12 c. he is satisfied with the representation provided to him by his counsel.  
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14 13. It is further agreed (i) that the defendant will neither appeal, nor otherwise litigate  
15 under Title 28, United States Code, Section 2255 and/or Section 2241, the conviction and any sentence  
16 within or below the stipulated Sentencing range and (ii) that the government will not appeal any  
17 sentence within or above the stipulated Sentencing range. This provision is binding on the parties even  
18 if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is  
19 agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be  
20 limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the  
21 above stipulation.  
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1           14.     The defendant agrees to forfeit, abandon, give up, and give away to the United  
2 States prior to the date of sentencing hearing, any right, title and interest the defendant may have in  
3 property subject to criminal forfeiture pursuant to 21 U.S.C. § 853, and 18 U.S.C. § 924(d)(1), or other  
4 items of property seized in the search of the defendant, his vehicle(s) and the defendant's home(s), not  
5 already returned to the defendant, if and only if it is determined pursuant to the criminal forfeiture  
6 statutes to be related to illegal activities. Such property shall accordingly be used, transferred, or  
7 disposed of at the discretion of the seizing agency.  
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9           15.     By this Agreement the defendant not only agrees to forfeit all interests in the  
10 property referred to in the above paragraph, but agrees to take whatever steps are necessary to convey  
11 any and all of his right, title and interest in such property to the United States. These steps include but  
12 are not limited to the surrender of title, the signing of a quit claim deed, the signing of a consent decree,  
13 the signing of abandonment papers, the signing of a stipulation of facts regarding the transfer and basis  
14 for the forfeiture and the signing of any other documents necessary to effectuate such transfers. The  
15 defendant further agrees to fully assist the government in the recovery and return to the United States of  
16 any assets or portions thereof as described above wherever located.  
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16. This Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

DATED: 6/25/07

LIN BING XIAN

LIN, BING XIAN  
Defendant

DATED: 6/25/07

COLIN M. THOMPSON, ESQ.  
Attorney for Defendant

LEONARDO M. RAPADAS  
United States Attorney  
District of the Northern Mariana Islands

DATED: 6/25/07

ERIC S. O'MALLEY  
Assistant U.S. Attorney

**INTERPRETER'S CERTIFICATION**

I orally translated the foregoing plea agreement in its entirety for the defendant from English into his native language. He indicated to me in his native language that he understood its content.

DATED: 6/25/07

Jean Shi  
QUALIFIED INTERPRETER